

**ASSEMBLY BILL**

**No. 943**

---

**Introduced by Assembly Member Mendoza**

February 26, 2009

---

An act to add Sections 12940.4 and 12940.5 to the Government Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 943, as introduced, Mendoza. Employment: credit reports.

Under existing law, it is an unlawful employment practice for an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of a person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment. Existing law, the federal Fair Credit Reporting Act, permits an employer to obtain a credit report regarding a person if the employer discloses to the person that a credit report may be obtained by the employer and the person has authorized the procurement of the credit report.

This bill would prohibit an employer, unless based on a bona fide occupational qualification, from refusing to hire or employ a person, refusing to select a person for a training program leading to employment, barring or discharging a person from employment or from a training program leading to employment, discriminating against a person in compensation or in terms, conditions, or privileges of employment, or taking any other adverse employment action against a person because

the person does not authorize the employer to obtain a credit report regarding the person. The bill would create a rebuttable presumption of an unlawful employment practice when an employer takes adverse employment action against a person within 60 days of the person denying authorization for the employer to obtain a credit report regarding the person.

This bill would also, commencing on July 1, 2011, require employers to submit to the Department of Fair Employment and Housing every 6 months a list of each applicant for employment and each employee who has applied for a promotion during the 6-month period, the race and gender of each applicant and employee specified, whether a credit report was obtained regarding each applicant and employee specified, and a list of all applicants offered employment and employees offered promotion during the 6-month period. The bill would then require the Department of Fair Employment and Housing, commencing on March 1, 2012, to annually report to the Legislature for the prior calendar year regarding the use of credit reports by employers and provide an analysis of whether the use of consumer credit reports has a disparate impact on employment of persons with respect to race and gender.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 12940.4 is added to the Government  
2 Code, to read:  
3 12940.4. (a) An employer shall, commencing with the first  
4 submission date of July 1, 2011, once per every six months, submit  
5 to the Department of Fair Employment and Housing the following:  
6 (1) A list of each applicant for employment and each employee  
7 who applied for a promotion during the six-month period.  
8 (2) The race and gender of each person listed pursuant to  
9 paragraph (1).  
10 (3) Whether a consumer credit report was obtained regarding  
11 each person listed pursuant to paragraph (1).  
12 (4) A list of all applicants offered employment and employees  
13 offered a promotion during the six-month period.  
14 (b) Commencing on March 1, 2012, and not later than March  
15 1 of each year thereafter, the Department of Fair Employment and  
16 Housing shall annually report to the Legislature for the prior

1 calendar year regarding the use of consumer credit reports by  
2 employers and provide an analysis of whether the use of consumer  
3 credit reports has a disparate impact on employment of persons  
4 with respect to race and gender. The report shall include, but not  
5 be limited to, the following:

6 (1) The number of applicants for employment and employees  
7 who applied for a promotion, categorized by race and gender.

8 (2) The number of applicants for employment offered  
9 employment and employees who applied for a promotion offered  
10 a promotion, categorized by race and gender.

11 (3) The number of applicants for employment and employees  
12 who applied for a promotion for whom a consumer credit report  
13 was obtained by the employer, categorized by race and gender.

14 (4) The number of applicants for employment offered  
15 employment and employees offered a promotion whose consumer  
16 credit reports were obtained by the employer, categorized by race  
17 and gender.

18 (c) For purposes of this section and Section 12940.5, “consumer  
19 credit report” has the same meaning as provided in subdivision (c)  
20 of Section 1785.3 of the Civil Code.

21 SEC. 2. Section 12940.5 is added to the Government Code, to  
22 read:

23 12940.5. (a) Unless based upon a bona fide occupational  
24 qualification, an employer shall not refuse to hire or employ a  
25 person, refuse to select a person for a training program leading to  
26 employment, bar or discharge a person from employment or from  
27 a training program leading to employment, discriminate against a  
28 person in compensation or in terms, conditions, or privileges of  
29 employment, or take any other adverse employment action against  
30 a person because the person does not authorize the employer to  
31 obtain a consumer credit report regarding the person.

32 (b) A rebuttable presumption of a violation of subdivision (a)  
33 is created when an employer takes adverse employment action  
34 against a person within 60 days of the person having denied  
35 authorization for the employer to obtain a consumer credit report  
36 regarding the person.